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IN THE  
**Supreme Court of the United States**  
October Term, 1978

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No. 77-1463

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PATRICIA ROBERTS HARRIS  
SECRETARY OF THE DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT, *et al.*,  
*Petitioners,*

v.

SADIE E. COLE, *et al.*,  
*Respondents.*

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On Writ of Certiorari to the United States Court of Appeals  
for the District of Columbia Circuit

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**MOTION TO DISMISS THE WRIT AS  
IMPROVIDENTLY GRANTED**

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Respondents Sadie E. Cole, *et al.* hereby move that this Court dismiss the writ of certiorari as improvidently granted on the ground that new legislation, and likely administrative action in response to it, will virtually eliminate any practical significance a decision on the merits of this case might have. Because the new legislation requires petitioner Harris, who is Secretary of Housing and Urban Development ("HUD"), to report on new policies by January 31, 1979, the Court may wish to defer ruling on this motion (and also defer argument on the merits, now

scheduled for December 5, 1978) until after the Secretary's report is submitted and can be evaluated.

### **STATUTE INVOLVED**

Sections 203(a), 203(d) and 902 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, provide as follows:

"Sec. 203(a) It is the policy of the United States that the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') shall manage and dispose of multifamily housing projects which are owned by the Secretary in a manner consistent with the National Housing Act and this section. The purpose of the property management and disposition program of the Department of Housing and Urban Development shall be to manage and dispose of projects in a manner which will protect the financial interests of the Federal Government and be less costly to the Federal Government than other reasonable alternatives by which the Secretary can further the goals of

- (1) preserving the housing units so that they can remain available to and affordable by low- and moderate-income families;
- (2) preserving and revitalizing residential neighborhoods;
- (3) maintaining the existing housing stock in a decent, safe, and sanitary condition;
- (4) minimizing the involuntary displacement of tenants; and
- (5) minimizing the need to demolish projects.

The Secretary, in determining the manner by which a project shall be managed or disposed of, may balance competing goals relating to individual projects in a

manner which will further the achievement of the overall purpose of this section."

\* \* \*

"Sec. 203(d)(1) Whenever tenants will be displaced as a result of the disposition of, or repairs to, a multifamily housing project owned by the Secretary, the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance which may be available.

(2) The Secretary shall seek to assure the maximum opportunity for any such tenant —

- (A) to return, whenever possible, to a repaired unit;
- (B) to occupy a unit in another multifamily housing project owned by the Secretary;
- (C) to obtain housing assistance under the United States Housing Act of 1937; or
- (D) to receive any other available relocation assistance as the Secretary determines to be appropriate."

\* \* \*

"Sec. 902 The Congress declares that in the administration of Federal housing and community development programs, consistent with other program goals and objectives, involuntary displacement of persons from their homes and neighborhoods should be minimized. In furtherance of the objective stated in the preceding sentence, the Secretary of Housing and Urban Development shall conduct a study on the

nature and extent of such displacement, and, not later than January 31, 1979, shall report to the Congress on recommendations for the formulation of a national policy to minimize involuntary displacement caused by the implementation of the Department's programs, and to alleviate the problems caused by displacement of residents of the Nation's cities due to residential and commercial development and housing rehabilitation, both publicly and privately financed. In carrying out such study, the Secretary shall (1) consult with representatives of affected public interest groups, government, and the development and lending industries; (2) provide data on the nature and scope of the displacement problem, both past and projected, and identify steps needed to improve the availability of such data; and (3) report fully on the current legal and regulatory powers and policies of the Department to prevent or compensate for displacement caused by its own programs."

### STATEMENT

The issue in this case is whether Title II of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971) ("Relocation Act"), requires the payment of benefits and the provision of other services to tenants who are evicted from a housing project that has been acquired by the Federal Government, following the default of a Federally insured mortgage. The Court below ruled in favor of the tenants, respondents here, while the Court of Appeals for the Seventh Circuit ruled against the tenants in *Alexander v. Patricia Roberts Harris, Secretary of the Department of Housing and Urban Development, et al.*, No. 77-874, with which this case is consolidated for argument.

In its petition for a writ of certiorari in this case, the Government pointed to the different rulings of the two courts of appeals and also urged that this issue had "considerable practical significance" to HUD in distinguishing between evicted tenants who are eligible for Relocation Act relief and those who are not covered by the Act. (Pet., p. 10)

The Government recognizes, however, that evicting low-income tenants from their homes without complying with the Relocation Act — notably by not assuring that there is decent, affordable replacement housing available — works a severe hardship on families who are in a poor position to find and afford suitable shelter. In its brief on the merits, the Government observed that the Secretary is working to relieve these hardships by searching for ways to supply the services contemplated by the Relocation Act in cases in which HUD believes the Act does not apply:

"The Department recognizes, of course, that persons displaced from government property may suffer greatly by virtue of displacement. The Secretary of Housing and Urban Development is now examining measures that would provide some level of benefits to persons who are required to move from a Department-owned housing project but who do not qualify for benefits under the Department's interpretation of the Relocation Act. She is considering whether the Department can provide such assistance by regulation under existing program statutes or whether it must seek new legislation and authorization for funding. The appropriate eligibility criteria and levels of assistance for each kind of displacement are also under study." (Gov't Br., pp. 62-63)

As we pointed out in our brief in opposition to the petition for certiorari, the Secretary had already (a) acted to



alleviate the hardships suffered by some of the displaced tenants in this case and (b) determined that decisions to demolish unsuccessful housing projects — which is what led to the tenants' eviction in this case — would in the future occur only rarely, on the personal approval of the Secretary. (Br. in Opp., pp. 5-8)

Congress has now acted in a way that reduces still further the likelihood that a decision on the merits in this case will have any practical significance. Sections 203(a) and (d) of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, \_\_\_\_ Stat. \_\_\_\_ (1978) ("1978 Housing Act"), which was signed by the President on October 31, 1978, will have the effect of requiring HUD to make every effort:

- (i) to minimize the number of displacements that will be caused under circumstances where the Government acquires property following mortgage defaults, and
- (ii) to provide maximum appropriate relocation assistance and relief to displaced persons deemed by HUD to be outside the protection of the Relocation Act.

Thus, Section 203(a) states that HUD's "property management and disposition program" — under which the tenants in this case were evicted — must be operated hereafter in a manner that furthers the goals of, *inter alia*,

"(4) minimizing the involuntary displacement of tenants; and

(5) minimizing the need to demolish projects."

Section 203(d) then provides, as to all tenants displaced from multifamily housing projects "owned by the Secretary," that HUD "shall seek to assure the maximum opportunity for any such tenant —



“(A) to return, whenever possible, to a repaired unit;

(B) to occupy a unit in another multifamily housing project owned by the Secretary;

(C) to obtain housing assistance under the United States Housing Act of 1937; or

(D) to receive any other available relocation assistance as the Secretary determines to be appropriate.”

With respect to the provision of relocation assistance in Section 203(d)(2)(D), the conference report makes clear that in determining the appropriate level of relocation assistance in specific instances, HUD will be required to consider “both the need and the income of the displaced tenants.” H.R. Rep. No. 95-1792, 95th Cong., 2d Sess. 69 (1978).

Moreover, Section 902 of the Act directs the Secretary to report to the Congress by January 31, 1979, her recommendations for a “national policy” (i) “to minimize involuntary displacement caused by the implementation of the Department’s programs” and (ii) “to alleviate the problems caused by displacement” of tenants who occupy both publicly and privately financed housing in such circumstances.

We believe the Secretary’s report under Section 902 will show that relocation services and benefits will be made available to all tenants who are displaced by HUD action, whether or not the Relocation Act is deemed applicable. We believe this is foretold by the statement of the Secretary’s intentions which is contained in the Government’s brief (quoted above). We believe this is also foretold by a recent HUD action making available to tenants displaced by the Section 312 Rehabilitation Loan Program “relocation assistance at levels substantially comparable to

those of the Uniform [Relocation] Act" if the Act does not apply. Letter by Robert Embry, HUD Assistant Secretary for Community Planning and Development, to HUD Regional Administrators, July 11, 1978.<sup>1</sup>

In short, we believe that the Secretary will soon act in such a manner that will eliminate or at least minimize the difference between situations where the Relocation Act applies and situations where it does not apply. The question for decision in this case will thus have lost practical significance. Therefore, it is respectfully submitted that this case no longer presents "an important question of federal law" which should be settled by this Court. Sup. Ct. R. 19(1)(b). The writ of certiorari should accordingly be dismissed as improvidently granted. See *Triangle Improvement Council v. Ritchie*, 402 U.S. 497, 497-502 (1971) (Harlan, J., concurring); *Rice v. Sioux City Cemetery*, 349 U.S. 70, 77 (1955) (writ dismissed where, per Frankfurter, J., "time may further illumine or completely outmode the issues in dispute").

It may be urged in opposition that dismissal would be premature if it were based to any substantial extent on projections of what administrative policy is likely to be. While it is not presently possible to measure the precise extent to which HUD will in fact adopt the policies set forth above, an adequate basis for such a determination will be presented on January 31, 1979, the date the Secretary is obligated by Section 902 of the 1978 Housing Act to make her report to Congress. Accordingly, the Court may wish to postpone oral argument on the merits, presently set for

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<sup>1</sup>HUD had previously begun according Relocation Act levels of relief to tenants in certain Section 8 projects who are displaced from their homes under circumstances where — in HUD's view — the Relocation Act would not apply. 24 C.F.R. § 881.309(b), 43 Fed. Reg. 4242 (January 31, 1978).

December 5, 1978, and give this motion further consideration after the parties have had sufficient time to review the Secretary's report and advise the Court of its content and significance.

WHEREFORE, respondents request that the writ be dismissed as improvidently granted or, in the alternative, that oral argument be postponed and, after petitioner Secretary of Housing and Urban Development submits her report pursuant to Section 902 of the 1978 Housing Act, the parties be given an opportunity to provide further information and argument on whether the writ should be dismissed.

Respectfully submitted,

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